IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1122 of 1980
WITH
CRIMINAL APPEAL No 1337 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT
Versus
PREMCHAND MOHANLAL

Appearance:
1. Criminal Appeal No. 1122 of 1980
MR UA TRIVEDI, APP for Petitioner
MR DD VYAS for Respondent No. 1

2. Criminal AppealNo 1337 of 1980
MR SK JHAVERI for Petitioner
MR DD VYAS for Respondent No. 1
MR UA TRIVEDI, APP for Respondent No.

CORAM : MR.JUSTICE M.S.PARIKH
Date of decision: 11/02/2000

ORAL JUDGEMENT

1. Both these appeals, one by the State of Gujarat and another by the Chotila Agricultural Produce Market Committee and its Chairman arise from the impugned judgment and order of acquittal rendered by the Ld. Judicial Magistrate First Class, Chotila on 10/7/1980 in Criminal Case No. 158/1980.

2. The respondent, hereinafter referred to as 'the accused', Mr. Premchand Mohanlal, came to be prosecuted upon a complaint filed by Mr. V.V. Khachar, Chairman of Chotila Agricultural Produce Market Committee for the offence punishable under rules 52, 54 and 58 of the Gujarat Agricultural Produce Market Rules, 1965 (for short 'the Rules'). The facts which can be restated from the impugned judgment for the purpose of deciding these two appeals move into a narrow compass. The Agricultural Produce Market Committee, Chotila was constituted under the relevant provisions of the Gujarat Agricultural Produce Market Act, 1963 (for short 'the Act') and Mr. V.V. Khachar was the Chairman of the said committee. The whole of the area within the Chotila Taluka was declared to be a market area and certain agricultural products such as wheat, Bajra, Juvar, Cotton (ginned and unginned) and groundnut (shelled and unshelled) were declared to be regulated under the provisions of the aforesaid Act. The complainant alleged that the purchase and sale of the said goods could only be entered into by getting valid licence under the relevant provisions of the aforesaid Act and that the accused carried on business in the market area during the period 1978-79 without payment of market fees and contravened the provisions of rule 52 of the Rules. It was further alleged that the accused operated in these goods without bringing them firstly in the market yard and thereby contravened the provisions of rule 54 of the Rules. It was finally alleged against the accused that the accused did not submit books of accounts and periodical returns in prescribed form and thereby committed the breach of conditions of licence resulting into offence punishable under rule 58 of the Rules.

3. The accused was brought before the Court and he was furnished with all the copies of the papers and the substance of the particulars thereof were explained to him. Upon being asked whether he pleaded guilty to the respective offences or whether he wanted to defend the case, the accused pleaded not guilty and claimed to be tried. Upon the trial the learned Magistrate found that

the complainant proved that the accused operated in the market area of the Chotila Agricultural Produce Market Committee without paying licence fees for the period from 1/10/1978 to 30/9/1979 in contravention of rule 52 of the Rules and that the accused also committed offence under rules 54 and 58 as alleged by the complainant. The Ld. Magistrate, however, held in favour of the accused that the complainant failed to establish that he was empowered to file the complaint against the accused. The result was the acquittal which is the subject matter of challenge in both these appeals.

4. On behalf of the Government as well as Mr. Jhaveri, learned advocate for the appellant in the other appeal submitted that consideration of decision rendered by a learned Single Judge of this Court in the case of State of Gujarat v/s. Harjivandas reported in (VI) 1965 G.L.R. page 877 by the Ld. Magistrate would be out of question and in any case the question which was dealt with by the Ld. Magistrate remained no longer res-integra in view of a later decision of the Hon'ble Supreme Court in the case of Jan Mohm. v. State of Gujarat reported in AIR 1966 S.C. 385. It would appear from Harjivandas's case (supra) that the complainant in that case was not appointed by the market committee which was not in existence on the relevant date. The contention was that as the new committee was not constituted, the old committee continued to function by virtue of sec. 6 (3A) of the Act and that contention was repelled by the Ld. Magistrate. The first observation of this Court in that respect is that the provision contain in section 6 (3A) of the Act would show that there must be a new committee and if there is such a committee, the old committee would continue till the date of the first general meeting of the new committee. This observation clearly appears to be in the said provision of the Act read with section 11 thereof. Next is the observation with reference to the facts before the Court in Harjivandas's case. In my opinion, the consideration of decision in Harjivandas's case in the present matter will be out of context and in any event the matter will be no longer res-integra in view of following observations of the Supreme Court in Jan Mohd's case (supra) (para. 16) :-

"16. It was then urged that the market committee was not lawfully constituted because no fresh elections had been held after the expiry of three years from September 18, 1958 for which the members of the committee were entitled to hold office under section 6 (6) of the Bombay Act 22

of 1939. Section 64 by the first sub-section repeals the Bombay Agricultural Produce Markets Act 22 of 1939 and by the 2nd sub-section, notwithstanding the repeal, every market committee established for any market area under any of the Acts so repealed shall, notwithstanding anything contained in section 11 but subject to the other provisions of the Act, be deemed to be a market committee established for the said market area under the Act and the members thereof holding office immediately before the commencement of the Act shall continue to hold the office for the period for which they would have held office, had the Act not been enacted or until the market committee is duly reconstituted u/S. 11 whichever is earlier. A market committee constituted under the Bombay Act 22 of 1939 is therefore entitled to function under the Gujarat Act, subject to the restrictions contained in section 64 (2) (ii). It is common ground that no fresh elections were held for the election of members of the market committee since May 1958. Under section 6 of the Bombay Act 22 of 1939 which dealt with the constitution of the market committees by sub-sec. 3, it was provided that every member of the market committee elected or nominated, when it is first constituted, shall hold office for a term of two years and every such member elected or nominated thereafter shall hold office for a term of three years. In the normal course, the members of the committee elected in 1958 would have held office for three years. But by sub-sec. (3A) it was provided that the term of office of the outgoing members of a market committee shall be deemed to extend to and expire with the day before the date of the first general meeting of the market committee constituted in its place. This provision was enacted by the Bombay Act 26 of 1951, presumably with a view to provide for the interregnum between the expiration of the period of office of the members and the constitution of a fresh committee after elections. The lawful authority of the members of the market committee was, notwithstanding the expiry of the period, extended by Sub-sec. (3A) till the date of the first general meeting of the market committee."

5. All that is said above is with regard to the

rival submissions on the question revolving round whether by virtue of the aforesaid provisions (secs. 6 (3A) and 11 of the Act) the old committee would continue under certain contingencies which necessarily involve factual aspect.

6. In so far as the appeals in question are concerned, it could be noticed that new market committee was elected, but there were some Court proceedings which intervened. No documentary evidence with regard to stay or otherwise as referred to in the oral evidence of defence witness no. 1 exh. 15 has been placed on record. That apart, even the prosecution has placed on record exh. 13 only, which speaks about resolution having been passed by managing committee; whereas there is no evidence to show whether the managing committee was authorized by market committee (old) for authorization of particular person for the purpose of section 41 (2) of the Act so as to enable him to file complaint against either erring member or the erring trader. Such factual aspects concerning the competence of the complainant and power to file complaint are apparently missing in the present case. In that view of the matter, the ultimate conclusion of the Ld. Magistrate about lack of authority in the complainant to file complaint will stand in asmuch as the complainant failed to place on record necessary factual material in respect of such authority.

In above view of the matter, both these appeals would merit dismissal. Order accordingly.

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PVR.